

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DARREN BROOKS, by his f/n/g DENNIS SMITH &
DENNIS SMITH, ind,

07 CV 3170 (PAC)

Plaintiffs,

-against-

THE CITY OF NEW YORK, Police Officer BRIAN
LUCKOWSKI, Shield # 23188, Police Officer JOHN
ACCONI, Shield # 5075, & Police Officer HECTOR
MORALES

ANSWER OF
DEFENDANTS CITY OF
NEW YORK, BRIAN
LUKOWSKI, JOHN
ACCONI AND HECTOR
MORALES

Defendants.

JURY TRIAL DEMANDED

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Defendants, CITY OF NEW YORK, BRIAN LUKOWSKI, i/s/h/a BRIAN
LUCKOWSKI, JOHN ACCONI, and HECTOR MORALES, by their attorney, Michael A.
Cardozo, Corporation Counsel of the City of New York, as and for their answer to the
Complaint, dated April 18, 2007 ("Complaint"), respectfully state as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint, except
admit that plaintiff purports to proceed as stated therein.

2. Deny the allegations set forth in paragraph "2" of the Complaint, except
admit that plaintiff purports to invoke the jurisdiction of the court as stated therein.

3. Deny knowledge or information sufficient to form a belief as to the truth of
the allegations set forth in paragraph "3" of the Complaint.

4. Deny knowledge or information sufficient to form a belief as to the truth of
the allegations set forth in paragraph "4" of the Complaint.

5. Admit the allegations set forth in paragraph "5" of the Complaint.

6. Deny the allegations set forth in paragraph "6" of the Complaint, except admit that Brian Lukowsky, shield number 23188, is and was on March 30, 2007 employed by the City as a police officer.

7. Deny the allegations set forth in paragraph "7" of the Complaint, except admit that John Acconi shield number 5075, is and was on March 30, 2007 employed by the City as a police officer.

8. Deny the allegations set forth in paragraph "8" of the Complaint, except admit that Hector Morales is and was on March 30, 2007 employed by the City.

9. Deny the allegations set forth in paragraph "9" of the Complaint, except admit that on or about March 30, 2007, plaintiff was at or near Franklin Avenue and St. Johns Place in Brooklyn, New York.

10. Deny the allegations set forth in paragraph "10" of the Complaint, except state that the allegations concerning "acting under color of law" are legal conclusions to which no response is required.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph "11" of the Complaint.

12. Deny the allegations set forth in paragraph "12" of the Complaint.

13. Deny the allegations set forth in paragraph "13" of the Complaint.

14. Deny the allegations set forth in paragraph "14" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

15. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

16. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

17. At all times relevant to the acts alleged in the complaint, the duties and functions of municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York has governmental immunity from liability.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

18. Plaintiff provoked any incidents.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

19. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the culpable or negligent conduct of third parties, and was not the proximate result of any act of defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

20. Punitive damages cannot be assessed as against the City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

21. Defendants Brian Lukowsky, John Acconi and Hector Morales have not violated any clearly established constitutional or statutory rights of which a reasonable

person would have known and therefore are protected by qualified immunity.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

22. At all times relevant to the acts alleged in the Complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

23. To the extent plaintiffs assert state law claims against the City of New York, such claims should be barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

24. There was reasonable suspicion and/or probable cause to detain, arrest and search plaintiffs.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

25. To the extent plaintiffs assert state law claims, they are barred by plaintiffs' failure to comply with the requirements of N.Y. General Municipal Law § 50.

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE

26. This Court lacks personal jurisdiction over the individual defendants Brian Lukowky, John Acconi and Hector Morales by reason of improper service of process.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

27. Venue of this action should be transferred to the Eastern District Of New York pursuant to 28 U.S.C. § 1404(a) for the convenience of the parties and witnesses and in the interest of justice.

WHEREFORE, defendants, City of New York, Brian Lukowsky, John Acconi and Hector Morales, respectfully request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief

as the Court may deem just and proper.

DATED: New York, New York
July 13, 2007

Respectfully submitted,

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
CITY OF NEW YORK, BRIAN
LUKOWSKY, JOHN ACCONI and
HECTOR MORALES
100 Church Street, Room 3-162
New York, New York 10007
(212) 788-9391

/s/

By: _____
Barry K. Myrvold (BM6908)

TO: Michael Colihan, Esq.
Attorney for Plaintiffs
44 Court Street, Suite 911
Brooklyn, New York 11201
(718) 488-7788

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2007, the foregoing document was served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

By ECF:

Michael Colihan, Esq.
Attorney for Plaintiffs
44 Court Street, Suite 911
Brooklyn, New York 11201
(718) 488-7788

DATED: New York, New York
July 13, 2007

/s/

Barry K. Myrvold (BM6908)

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SOUTHERN DISTRICT OF NEW YORK

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-against-

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Defendants.

**ANSWER OF DEFENDANTS CITY OF NEW
YORK, BRIAN LUKOWSKY, JOHN ACCONI
AND HECTOR MORALES**

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York

Attorney for Defendants

100 Church Street

New York, N.Y. 10007

Of Counsel: Barry K. Myrvold

Tel: (212) 788-9391

NYCLIS No.2007-014660

Due and timely service is hereby admitted.

New York, N.Y. , 2007.....

..... Esq.

Attorney for